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HARMFUL EFFECTS OF THE USE OF ANTI-FOULING PAINTS FOR SHIPS

Report of the Working Group at MEPC 44

Note by the Secretariat

SUMMARY

<i>Executive summary:</i>	This document provides a summary of the deliberations of the anti-fouling paints Working Group which met during the 44th session of MEPC. The Annex to this document contains the full text of the draft legal instrument on anti-fouling systems as developed by the Working Group at MEPC 44.
<i>Action to be taken:</i>	Paragraph 18
<i>Related documents:</i>	MEPC 44/20 section 3, MEPC 44/3, MEPC 44/3/1, MEPC 44/3/2, MEPC 44/3/3, MEPC 44/3/4, MEPC 44/3/5 and resolution A.895(21).

1 Introduction

1.1 The Working Group met from 6 to 10 March 2000 under the Chairmanship of Mr. Bryan Wood-Thomas (United States). Delegations from Algeria, Australia, Bahamas, Belgium, Brazil, Canada, China, Cyprus, Denmark, Dominica, Egypt, Finland, France, Germany, Greece, India, Italy, Japan, Liberia, Malaysia, the Marshall Islands, the Netherlands, Nigeria, Norway, Panama, Poland, Portugal, Republic of Korea, Russian Federation, Singapore, Sweden, Tunisia, Turkey, the United Kingdom, and the United States, the Associate Member of Hong Kong, China, and observers from the OECD, ICS, BIMCO, CEFIC, OCIMF, FOEI, OGP, AWES, GREENPEACE, WWF, IPTA and ISAF participated.

1.2 The Group had before it the following documents: MEPC 44/3 (Secretariat), MEPC 44/3/1 (Japan), MEPC 44/3/2 (ISAF), MEPC 44/3/3 (Netherlands), MEPC 44/3/4 (CEFIC), MEPC 44/3/5 (Brazil), MEPC 44/3/6 (WWF), MEPC 44/3/7 (Germany), MEPC 44/INF.11 (Italy, Netherlands, Portugal and Spain), and MEPC 44/INF.15 (Greenpeace).

2 Committee's Instructions to the Working Group

2.1 The Working Group was instructed to:

- .1 introduce all papers not considered at plenary;
- .2 use the instrument contained in the report of the Working Group, document MEPC 44/3 for further developing the draft legal instrument and merge proposals contained in the Japanese proposal (MEPC 44/3/1) where appropriate;

- .3 review the text of the draft legal instrument, taking into account the proposals made by Japan, ISAF, Netherlands, CEFIC and Brazil;
- .4 provide an oral report to the plenary's consideration outlining the major outcomes of the Group's work; and
- .5 submit a full report with a draft text of legal instrument for the plenary's consideration at MEPC 45.

3 **Review of the text of the Convention**

3.1 The Chairman recalled that at the last session the Working Group had reviewed the most substantive articles, including articles 1, 2, 4 and 5, as well as annexes 2 and 3.

3.2 Recognizing the instructions of the Committee, the Group decided to start by reviewing the substance of the Convention on an article by article basis, prior to discussing the framework of the Convention. As instructed, the Group undertook the article by article review based on the draft text of the global legally binding instrument, as contained in document MEPC 44/3 and taking into account the numerous proposals contained in the documents by Japan, CEFIC, IASF, and the Netherlands.

3.3 The Group reviewed the preamble paragraphs, all the articles (except articles 19 and 22 of the annexed text) and all four of the annexes to the instrument. The Group agreed that articles 19 and 22 concerning amendment and entry-into-force of the instrument would be best discussed at its next session. In reviewing the text of the instrument the Group addressed the following issues:

- .1 process for proposing additional controls on anti-fouling systems;
- .2 expert group;
- .3 confidential data;
- .4 cope of legally binding instrument;
- .5 definitions;
- .6 surveys;
- .7 inspection of ships and detection of violations;
- .8 placarding;
- .9 interpretation of the complete ban;
- .10 entry into force;
- .11 circulation of information on performance of anti-fouling systems;
- .12 performance of tin-free anti-fouling systems;
- .13 amendment of the instrument; and
- .14 work underway at the OECD.

4 Process for proposing additional controls on anti-fouling systems

4.1 The Group undertook extensive discussions on what the process for amending controls on anti-fouling systems should be. In considering this, the Group took into account the two step amendment process described in document MEPC 44/3, that suggests that initial data be submitted to the expert group followed by the submission of more detailed information should there be a need to take the proposal any further, and the one step approach outlined in document MEPC 44/3/1 that suggests that the proposal put forward should include a comprehensive set of required data. After an initial discussion, the support for the two step verses the one step approach was evenly divided among the Group. In view of the discussions, the Group identified four possible options:

- Option A: Proposal to amend the control based on an initial proposal submitted to MEPC which decides whether to form an expert group or whether the proposal requires no further consideration;
- Option B: Proposal to amend the controls based on an initial proposal submitted automatically to an expert group for recommendation on whether further consideration is warranted;
- Option C: Proposal to amend the controls based on a comprehensive proposal submitted to MEPC which decides whether to form an expert group; and
- Option D: Proposal to amend the controls based on a comprehensive proposal submitted automatically to an expert group for recommendation.

4.2 In considering these options, the Group recognized that the MEPC is the appropriate body for the Parties to determine whether a proposal for amending controls would justify the establishment of an Expert Group. Although most of the delegations preferred the option of the MEPC deciding on the establishment of an Expert Group based on an initial proposal, as this could save resources of both the proposing Party and the MEPC, it was agreed that the proposing Party could submit both the initial and comprehensive proposal to the MEPC at the same time. Recognizing this, the Group decided to draft the instrument in a manner that allows proposals to be submitted and considered as described in options A and C. No support was voiced for options B and D. In discussing the role of the Expert Group, it was agreed that should the Expert Group believe that further information was necessary, a decision as to whether to request further information would need to be taken by the MEPC. Recognizing this the Expert Group would not approach the Member States directly, and that all decisions would be taken by the Parties through the MEPC.

5 Expert group

5.1 In considering CEFIC's proposal to allow non-governmental organizations (NGO's) to participate as observers in the Expert Group, the Group saw merit in including both NGO's and inter-governmental organizations (IGO's) in the Group as observers in view of the additional information and expertise which these organizations could offer. The Group further agreed on language under article 6 that explicitly provides for the participation of non-Parties, IGO's and NGO's. The Group recognized, however, that recommendations to the MEPC should be formulated only by Government-designated representatives of those countries Parties to the agreement.

6 Confidential data

6.1 CEFIC highlighted the need to treat any data specified as confidential as such in view of the large industry investments needed for producing such data and the intra-industry competition. The Group considered whether there was a need for handling confidential data and agreed that while the need to consider confidential information may be unlikely, a provision should be included in the

instrument reflecting that should there be a need for handling such data, then the MEPC would develop appropriate procedures for doing so.

7 Scope of legally binding instrument

7.1 The United States, the Russian Federation and China expressed their continued support for language that would limit the application of the Convention to ships that "engage in international voyages". However, an overwhelming majority of the Group supported that the instrument should apply to all ships entitled to fly the flag of a Party and the draft text was changed to reflect the majority view.

7.2 The Group considered whether to limit the instrument to regulating anti-fouling systems on ships hulls or whether to extend the instrument to apply to internal parts of ships where such systems are used, for example, ballast water tanks. The Group agreed to apply the instrument by 2003 for the prohibition of application to internal spaces, but also recognized that that it would be impractical to apply to internal surfaces the provision effective in 2008 that would require overcoating or removal of existing organotin based systems.

7.3 The Group also agreed that platforms should be included in the instrument, but that the requirement to overcoat or remove organotin based systems in 2008 would not apply to platforms that were built and last dry docked before 2003. The Group also agreed that fixed and floating platforms (including Floating Production Storage and Offloading Units (FPSO's) and Floating Storage Units (FSU's) engaged in oil and gas exploration and exploitation, but not including mobile off-shore drilling units (MODUs)) that operate solely in the waters of a given coastal State shall not be subject to the survey and certification requirements found in articles 9 to 13.

8 Definitions

8.1 The Group reviewed each of the definitions found in article 3 and discussed whether definitions of "fouling" and "small ships" were necessary. The Group agreed that a definition of "fouling" was unnecessary and that no provision yet existed in the instrument that would necessitate a definition for "small ships".

9 Surveys

9.1 The Group agreed to use the text proposed in the Japanese document as reflected in articles 9 to 13. The Group further agreed that smaller ships that are not engaged in international voyages should be exempt from survey and certification requirements. While it was agreed that some threshold must be established for this purpose (e.g., ships less than [300] [400] or [500] gross tons or ships less than 24 metres) the members of the Group agreed that further consideration was necessary to define what threshold was most appropriate for this purpose. To help delegates in their consideration of this matter, BIMCO noted that their records show that there are approximately 84,000 vessels over 100 gross tons, 42,000 over 500 gross tons, and 28,000 over 1,000 gross tons. Figures for 300 and 400 gross tons could be obtained, but were not available during the discussions at MEPC 44.

10 Inspection of ships and detection of violations

10.1 The Group agreed that it was extremely important and in the interest of all stakeholders to prevent a "black market" in the use of TBT-based coatings. The Group further discussed that it is generally impractical to employ visual methods of inspection to verify whether a paint contains tributyltin and that a brief sample of the paint may be conducted by the port State authority. Some delegations voiced concern that the provision represents a departure from more traditional control provisions and the principal of "no clear grounds" used in main IMO technical Conventions. Some

other delegations felt the ability to inspect the coating was critical to success of the instrument. All Members of the Group were in agreement that such a provision must be constrained in such a manner to prevent abuse of this provision and to ensure consistency in its application. To accomplish this, language under paragraph 1(b) of Article 15 was specifically drafted to preclude preventing a ship from departing while the laboratory results of a sampling procedure were being processed.

10.2 It was also discussed whether the sampling procedure itself could result in a delay of the ship. While many delegations felt that sampling should be limited to a brief sample and that the provisions in Article 16 concerning undue delay would sufficiently cover this matter, others argued that both sampling and analysis should be addressed in the paragraph. To address these concerns it was suggested that the Group develop Guidelines that will further specify the scope of the sampling and inspection procedure to avoid inconsistency in interpretation and undue delay to ships.

11 Placarding

11.1 The Group briefly exchanged views on whether "placarding" of small vessels was appropriate. Some delegations questioned whether such a requirement was useful while others suggested it was valuable as a mechanism to promote compliance on smaller vessels. Delegations will need to consider whether placards or some alternative mechanism should be included to facilitate compliance and enforcement of the instrument on smaller vessels.

12 Interpretation of the complete ban

12.1 The Group discussed whether the prohibition effective in 2008 should require complete removal (i.e., sandblasting of the hull) or whether TBT-based coatings applied before 2003 could remain on the hull provided they were overcoated and no longer functioned as the active biocide. While many delegations felt that we should avoid a requirement that would necessitate sandblasting all vessels, it was agreed that further consideration of this issue was necessary before arriving at a decision on this matter. In this context, it was noted that tests are underway to determine if older coatings of TBT-based systems (later covered with tin-free systems) would significantly complicate the use of certain technologies that may be used to detect the presence of TBT-based anti-fouling systems.

12.2 Other concerns were raised about the presence of TBT on ships destined for recycling and the need to carefully consider this matter. As a result, the current draft text found in Appendix 1 of the instrument contains two options. The first effectively requires the removal by sandblasting of TBT-based systems by 2008 and the second only requires that such systems be overcoated so that the TBT-based system no longer functions as the ships active anti-fouling system. The Group noted that further discussion on this issue will be appropriate when the results of tests currently underway to determine the capabilities of specific TBT-detection technologies become available.

12.3 In considering a situation where the instrument has not entered into force in 2003, some delegations expressed the need to maintain a five-year interval between entry into force and the restrictions to take effect at the target date of 2008. Other delegations did not want to delay the 2008 date in any way since this was the date identified in resolution A.895(21). No conclusions were reached on this matter and further discussion will be necessary.

13 Entry into force

13.1 The Group decided to defer discussion of this issue to MEPC 45.

14 Circulation of information on performance of anti-fouling systems

14.2 The Group considered the proposal by Brazil (MEPC 44/3/5) of using the IMO's homepage for disseminating information provided by Member States on the results of performance tests carried out on ships coated with alternative non-TBT anti-fouling systems. Whilst all the delegates recognized the value of this information to the shipping industry, it agreed that it is the role of the paint industry to provide such information, and not that of IMO. In this respect the observer from CEFIC informed the Group that such information could be made available through their website "<http://ANTIFOULINGPAINT.COM>".

15 Performance of tin-free anti-fouling systems

15.1 Mr. John Lewis (Australia) provided information on the project undertaken by the Australian Defence, Science and Technology Organization to evaluate the effectiveness of tin-free anti-fouling systems. He informed the Group that tests carried out over four and five year periods have shown that certain tin-free systems are capable of providing performance similar to TBT based systems at life spans of 4 or 5 years.

16 Amendment of the instrument

16.1 In considering which parts of the Convention should be brought into force by explicit acceptance procedures, and which parts cover technical requirements and should be brought into force through tacit amendment procedures, the Group was in agreement that article 4 was a core obligation of the treaty and should only be amended through explicit acceptance procedures. Members of the Group agreed that articles 9 to 13 were appropriate for tacit amendment, but could not reach agreement on what amendment procedure should be applied to articles 5, 6 and 7. Delegations will need to consider what elements of the instrument should be subject to explicit amendment or tacit amendment procedures. Once agreement is reached on this question, it can then be decided if converting certain articles into regulations is appropriate.

17 Work underway at the OECD

17.1 Ms. Nicky Grandy of the OECD provided a briefing to the Group outlining efforts underway in the OECD to harmonize data requirements and registration processes applicable to marine anti-fouling systems. The OECD has altered its workplan to review the data requirements associated with anti-fouling biocides in a timeframe useful to our deliberations at the IMO. As a result, the Group anticipate input from the OECD discussions that may be considered at MEPC 46 as the Group finalize the content of Annexes 2 and 3 of the draft instrument.

18 Action requested of the Committee

18.1 Delegations are encouraged to review the draft text including those issues annotated via the footnotes and those issues summarized in the Working Group report. An article-by-article review of the draft text will be undertaken in plenary at MEPC 45.

ANNEX**INTERNATIONAL CONVENTION ON THE CONTROL OF HARMFUL
ANTI-FOULING SYSTEMS****THE PARTIES TO THIS CONVENTION,**

NOTING that scientific studies and investigations by Parties and competent international organizations have shown that some anti-fouling systems used on ships pose a substantial risk of toxicity and other chronic impacts to ecologically and economically important marine organisms as well as consequences to human health that may occur through the consumption of contaminated seafood;

NOTING IN PARTICULAR the serious concern regarding anti-fouling systems that use organotins acting as biocides and being convinced that the introduction of such organotins into the environment must be phased-out;

RECALLING that Agenda 21, Chapter 17 of the Rio Declaration on Environment and Development calls upon States to take measures to reduce pollution caused by organotin compounds used in anti-fouling systems;

RECALLING ALSO that the IMO Assembly resolution A.895(21), urges the Marine Environment Protection Committee to work towards the expeditious development of a global legally binding instrument to address the harmful effects of anti-fouling systems used on ships as a matter of urgency;

RECOGNIZING THE IMPORTANCE of protecting the marine environment from adverse effects from anti-fouling systems used on ships;

RECOGNIZING ALSO that the use of anti-fouling systems to prevent the build-up of organisms on the surface on ships is of critical importance to efficient commerce;

RECOGNIZING FURTHER the need to continue to develop anti-fouling systems which are effective and environmentally safe;

NOTING the precautionary approach set out in Principle 15 of the Rio Declaration and referred to in Resolution MEPC.67(37) of the International Maritime Organization's Marine Environment Protection Committee;

HAVE AGREED as follows:

ARTICLE 1

General Obligations

1. Each Party to this Convention undertakes to give effect to the provisions of this Convention and the Annexes thereto, in order to reduce or eliminate adverse effects on the marine environment caused by anti-fouling systems.
2. The Annexes form an integral part of this Convention. Unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to its Annexes.
3. No provision of this Convention shall be interpreted as preventing a Party from taking, individually or jointly, more stringent measures with respect to the reduction or elimination of adverse effects of anti-fouling systems on the environment, consistent with international law.
4. Parties shall endeavour to co-operate for the purpose of effective implementation, compliance and enforcement of this Convention.
5. The Parties undertake to encourage the continued development of anti-fouling systems that are effective and environmentally safe.

ARTICLE 2

Application

1. Unless otherwise specified in this Convention, this Convention shall apply to all ships that are entitled to fly the flag of a Party.
2. This Convention shall not apply to any warships, naval auxiliary or other ships owned or operated by a Party and used, for the time being, only on government non-commercial service. However, each Party shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with this Convention.
3. With respect to the ships of non-Parties to this Convention, Parties shall apply the requirements of the present Convention as may be necessary to ensure that no more favourable treatment is given to such ships.

ARTICLE 3

Definitions¹

For the purposes of this Convention, unless expressly provided otherwise:

1. “Administration” means the Government of the State under whose authority the ship is operating. With respect to a ship entitled to fly a flag of a State, the Administration is the Government of that State. With respect to fixed or floating platforms engaged in exploration and exploitation of the sea-bed and subsoil thereof adjacent to the coast over which the coastal state exercises sovereign rights for the purposes of exploration and exploitation of their natural resources, the Administration is the Government of the coastal State concerned.

¹ The Group agreed that a definition for "fouling" was not needed.

2. “Anti-fouling system” means a coating, paint, surface treatment, surface, or device that is used on a ship to control or prevent attachment of unwanted organisms.
3. “International voyage” means a voyage by a ship entitled to fly the flag of one State to a port or offshore terminal under the jurisdiction of another State.
4. “Organization” means the International Maritime Organization.
5. “Secretary-General” means the Secretary-General of the Organization.
6. “Ship” means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft, and fixed or floating platforms.

ARTICLE 4

Controls on Anti-Fouling Systems

In accordance with the requirements specified in Annex 1, each Party shall prohibit and/or restrict the use of harmful anti-fouling systems on ships that are entitled to fly its flag and to which this Convention applies, and shall take effective measures to ensure that such ships comply with those requirements.

ARTICLE 5

Process for Proposing Amendments to Controls on Anti-Fouling Systems

1. Any Party may propose an amendment to Annex 1 in accordance with this article.
2. An initial proposal shall contain the information required in Annex 2, and shall be submitted to the Organization. The Organization shall notify member States and intergovernmental and non-governmental organizations in consultative status with the Organization when it receives a proposal and shall make it available.
3. The Marine Environment Protection Committee shall decide whether the anti-fouling system in question warrants a more in-depth review based on the contention of risk presented in the initial proposal. If the Marine Environment Protection Committee decides that further review is warranted, it shall require the proposing Party to submit to the Marine Environment Protection Committee a comprehensive proposal containing the information required in Annex 3 except where the initial proposal also includes all the information required in Annex 3. The Marine Environment Protection Committee shall establish an expert group in accordance with article 6 when the comprehensive proposal has been received.
4. The expert group shall review the comprehensive proposal along with any additional data submitted by any interested party and shall evaluate and report to the MEPC whether the proposal has demonstrated a potential for unreasonable risk of adverse effects on non-target organisms such that the amendment of Annex 1 is warranted. In this regard:

- (a) The expert group's review shall consist of:
- (i) an evaluation of the association between the anti-fouling system and the adverse effects observed in the environment or through controlled studies based on the data in the proposal and any other relevant data which comes to light;
 - (ii) an evaluation of the potential risk reduction attributable to the proposed control measures and any other control measures that may be considered by the expert group;
 - (iii) consideration of available information on the technical feasibility of control measures and the cost-effectiveness of the proposal;
 - (iv) consideration of available information on other effects from the introduction of such control measures relating to:
 - the environment (including the cost of inaction, air quality);
 - shipyard health and safety concerns (effects on shipyard workers);
 - the cost to international shipping and other relevant sectors; and
 - (v) consideration of the availability of suitable alternatives.
- (b) The expert group's report shall be in writing and shall take into account each of the evaluations referred to in subparagraph (a), except that the expert group may decide not to proceed with the evaluations described in subparagraph (a)(ii) through (a)(v) if it determines after the evaluation in subparagraph (a)(i) that the proposal does not warrant further consideration.

5. The Marine Environment Protection Committee shall decide whether to approve any proposal to amend Annex 1 taking into account the expert group's recommendation. Only Parties to this Convention shall participate in such a decision. A decision not to approve the proposal shall not preclude future submission of a new proposal with respect to a particular anti-fouling system if new evidence comes to light.

ARTICLE 6

Expert Groups

1. The Marine Environment Protection Committee shall establish an ad hoc expert group to perform the review functions for each comprehensive proposal submitted pursuant to article 5 of this Convention. A new expert group shall be established for each new comprehensive proposal received, except, as appropriate, in those circumstances where proposals are received concurrently or where an existing review is already under way.

2. Any Party may participate in the deliberations of an expert group. Expert groups shall be composed of experts with expertise in environmental fate, marine biology, economic analysis, risk management, or other fields of expertise necessary to objectively review the technical merits of a proposal. Any Party participating in the expert group should draw on the technical expertise available to it in its departments or ministries.

3. The Marine Environment Protection Committee shall decide on the terms of reference, organization and operation of the expert groups. Such terms shall provide for participation by interested member States as well as intergovernmental and non-governmental organizations as observers. Such terms shall also provide for protection of any confidential information that may be submitted. Expert groups may hold such meetings as required, but shall endeavour to conduct their work through written or electronic correspondence or other mediums as appropriate.

4. Only the representatives of Parties shall participate in formulating any recommendation to the Marine Environment Protection Committee pursuant to article 5 of this Convention. An expert group shall endeavour to achieve unanimity among the representatives of the Parties. If unanimity is not possible, the expert group shall communicate any minority views of such representatives.

ARTICLE 7

Scientific and Technical Research and Monitoring

1. The Parties shall take appropriate measures to promote and facilitate scientific and technical research on the effects of anti-fouling systems as well as monitoring of such effects. In particular, such research should include observation, measurement, sampling, evaluation and analysis of the effects of anti-fouling systems.

2. Each Party shall, to further the objectives of this Convention, promote the availability of relevant information to other Parties who request it on:

- (a) scientific and technical activities undertaken in accordance with this Convention;
- (b) marine scientific and technological programs and their objectives; and
- (c) the effects observed from any monitoring and assessment programs relating to anti-fouling systems.

ARTICLE 8

Communication of Information

1 The Parties to the Convention undertake to communicate to the Organization a list of nominated surveyors or recognized organizations which are authorized to act on their behalf in the administration of matters relating to the control of anti-fouling systems in accordance with the provisions of this article for circulation to the Parties for information of their officers. The Administration shall therefore notify the Organization of the specific responsibilities and conditions of the authority delegate to nominate surveyors or recognized organizations.

2 The Organization shall notify make available electronically or through other means as appropriate any information communicated to it under paragraph 1 of this Article.

ARTICLE 9

Surveys

1 Ships of [[300] [400] [500] gross tonnage] [24 metres in length]² and above excluding fixed or floating platforms, FSUs, FPSUs³, engaged in international voyages shall be subject to surveys specified below:

- (a) an initial survey before the ship is put into service or before the International Anti-fouling Certificate required under article 10 or 11 of this Convention is issued for the first time.
- (b) A survey when the anti-fouling systems are changed. Such surveys shall be endorsed on the International Anti-fouling Certificate issued under articles 10 or 11 of this Convention.

2 The survey shall be such as to ensure that the ship's anti-fouling system fully complies with the applicable requirements of this Convention.

3 The Administration shall establish appropriate measures for ships which are not subject to the provisions of paragraph 1 of this article in order to ensure that applicable provisions of this Convention are complied with.

- 4 (a) Surveys of ships, as regard the enforcement of this provisions of this Convention, shall be carried out by officers duly authorized by the Administration or as provided in paragraph 1 of article 11 of this Convention, based on the Guidelines* for surveys. The Administration may, however, entrust surveys required by this Convention either to surveyors nominated for that purpose or to organizations recognized by it.
- (b) An Administration nominating surveyors or recognizing organizations to conduct surveys shall, as a minimum, empower any nominated surveyor or recognized organization to:
 - (i) require a ship that it surveys to comply with the provisions of Annex 1 of this Convention; and
 - (ii) carry out surveys and inspections if requested by the appropriate authorities of a port State that is a Party to this Convention.

The Administration shall notify the Organization of the specific responsibilities and conditions of the authority delegated to the nominated surveyors or recognized organizations, for circulation to the Parties to this Convention.

² Delegates need to consider what threshold is appropriate when excluding certain vessels from the survey and certification requirements.

³ Survey and certification requirements do apply to mobile off-shore drilling units operating in waters under the sovereignty or jurisdiction of a Party or flying the flag of the Party.

* Refer to resolution ...- Guidelines on surveys (to be developed before this Convention enters into force.)

- (c) When the Administration, a nominated surveyor, or a recognized organization determines that the ship's anti-fouling system does not conform either to the particulars of an International Anti-fouling Certificate required under article 10 or 11 to the requirements of this Convention, such surveyor and organization shall immediately ensure that corrective action is taken to bring the ship into compliance. A surveyor or organization shall also in due course notify the Administration of any such determination. If the required corrective action is not taken, the Administration shall be notified immediately, and it shall ensure that the Certificate is not issued or is withdrawn as appropriate. If the ship is in the port of another Party, the appropriate authorities of the port State shall be notified immediately. When an officer of the Administration, a nominated surveyor, or a recognized organization has notified the appropriate authorities of the port State, the Government of the port State concerned shall give such officer, surveyor or organization any necessary assistance to carry out their obligations under this article, including any action described in article 15 of this Convention.

Article 10

Placards and ⁴ Issue or Endorsement of International Anti-fouling Certificates

1. The Administration shall ensure that a ship [of less than [300] [400] [500] gross tons] [24 metres in length] to which this Convention applies shall display, in the primary onboard storage space for paints, coatings or other equipment related to the anti-fouling system employed on the ship, a placard which notifies the officers and crew of those anti-fouling systems whose use is prohibited or restricted. The placard shall be written in the working language of the officers and in English, French or Spanish.
2. The Administration shall ensure that a ship [of [300] [400] [500] gross tons] [24 metres in length] and above, that engages in international voyages, to which paragraph 1 of article 9 applies is issued an International Anti-fouling System Certificate after successful completion of a survey in accordance with article 9 of this Convention. A Certificate issued under the authority of a Party to this Convention shall be accepted by the other Parties and regarded for all purposes covered by this Convention as having the same validity as a Certificate issued by them.
3. Certificates shall be issued or endorsed either by the Administration or by any person or organization duly authorized by it. In every case, the Administration assumes full responsibility for the Certificate.

Article 11

Issue or Endorsement of an International Anti-fouling Certificate by another Party

1. At the request of the Administration, another Party to this Convention may cause a ship to be surveyed and, if satisfied that the provisions of the Convention have been complied with, shall issue or authorize the issuance of an International Anti-fouling Certificate to the ship, and where appropriate, endorse or authorize the endorsement of that Certificate on the ship, in accordance with this Convention.

⁴ Decision needs to be taken as to whether to require smaller vessels to retain placards or some alternative mechanism for facilitating compliance and enforcement on smaller vessels.

2 A copy of the Certificate and a copy of the survey report shall be transmitted as soon as possible to the requesting Administration.

3 A Certificate so issued shall contain a statement that it has been issued at the request of the Administration and it shall have the same force and receive the same recognition as a Certificate issued by the Administration.

4 No International Anti-fouling System Certificate shall be issued to a ship which is entitled to fly the flag of a State which is not a Party.

Article 12

Form of International Anti-fouling Certificate

The International Anti-fouling Certificate shall be drawn up in the official language of the issuing Party, in the form set forth in Annex 4. If the language used is neither English, French nor Spanish the text shall include a translation into one of these languages.

Article 13

Validity of International Anti-fouling Certificates

An International Anti-fouling Certificate issued under article 10 or 11 shall cease to be valid in any of the following cases:

- (a) if the anti-fouling system is changed and the Certificate is not endorsed in accordance with the present articles;
- (b) upon transfer of the ship to the flag of another State. A new Certificate shall only be issued when the Party issuing the new Certificate is fully satisfied that the ship is in compliance with the requirements of article 9. In the case of a transfer between Parties, if requested within three months after the transfer has taken place, the Party whose flag the ship was formerly entitled to fly shall, as soon as possible, transmit to the Administration copies of the International Anti-fouling Certificates carried by the ship before the transfer and, if available, copies of the relevant survey reports.

ARTICLE 14

Violations

1. Any violation of the requirements of this Convention shall be prohibited and sanctions shall be established therefor under the law of the Administration of the ship concerned wherever the violation occurs. If the Administration is informed of such a violation, it shall investigate the matter, and may request the reporting Party to furnish additional evidence of the alleged violation. If the Administration is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, it shall cause such proceedings to be taken as soon as possible, in accordance with its laws. The Administration shall promptly inform the Party that reported the alleged violation, as well as the Organization, of any action taken. If the Administration has not taken any action within 1 year after receiving the information, it shall so inform the Party which reported the alleged violation.

2. Any violation of the requirements of the present Convention within the jurisdiction of any Party shall be prohibited and sanctions shall be established therefore under the law of that Party. Whenever such a violation occurs, that Party shall either:

- (a) cause proceedings to be taken in accordance with its law; or
- (b) furnish to the Administration of the ship concerned such information and evidence as may be in its possession that a violation has occurred.

3. The penalties provided for by the laws and articles of a Party for vessels entitled to fly its flag shall be adequate in severity to discourage violations of this Convention wherever they occur.

ARTICLE 15

Inspections of Ships and Detection of Violations

1. A ship to which this Convention applies may, in any port or offshore terminal of a State, be subject to inspection by officers appointed or authorized by that State for the purpose of determining whether the ship is in compliance with the applicable provisions of this Convention. Unless there are clear grounds for believing that a ship is in violation of the applicable provisions of this Convention, any such inspection shall be limited to:

- (a) verifying that there is onboard a valid Certificate or Placard; and
- (b) a brief sampling of the ship's anti-fouling system that does not affect the integrity, structure, or operation of the anti-fouling system in accordance with the guidelines to be developed by the Organization. However, the time required to process the results of such sampling shall not be used as a basis for preventing the departure of the ship⁵.

2. If there are clear grounds to believe that the ship is in violation of the applicable provisions of this Convention, a thorough inspection may be carried out taking into account the guidelines to be developed by the Organization.

3. If the ship is detected to be in violation of this Convention, the Party carrying out the inspection may take steps to warn, detain, dismiss or exclude the ship from its ports. A Party taking such action against a ship for the reason that the ship does not comply with the provisions of this Convention, shall immediately inform the Administration of the State whose flag the ship is entitled to fly.

4. Parties shall co-operate in the detection of violations and the enforcement of the provisions of this Convention. A Party may also inspect a ship when it enters the ports or offshore terminals under its jurisdiction, if a request for an investigation is received from any Party, together with sufficient evidence that a ship is operating or has operated in violation of a provision in this Convention. The report of such investigation shall be sent to the Party requesting it and to the competent authority of the Administration of the ship concerned so that the appropriate action may be taken under this Convention.

⁵ It has been suggested that guidelines could be developed in the course of our negotiation that would set the permissible parameters for sampling of the ships anti-fouling systems and the need to prevent undue delay to ships.

ARTICLE 16
Undue Delay to Ships

1. All possible efforts shall be made to avoid a ship being unduly detained or delayed under articles 14 and 15 of this Convention.
2. When a ship is unduly detained or delayed under articles 14 and 15 of this Convention, it shall be entitled to compensation for any loss or damage suffered.

ARTICLE 17
Dispute Settlement⁶

ARTICLE 18
Duties of the Organization⁷

1. The Organization shall be responsible for the Secretariat duties in relation to this Convention.
2. Secretariat duties necessary for the administration of this Convention include:
 - (a) conveying to the Parties concerned all notifications received by the Organization in accordance with this Convention;
 - (b) [....other provisions to be developed....]

ARTICLE 19
Amendments

[To be developed. Consistent with article 5, this article would contain a provision stating that the proposal and adoption of amendments to Appendix 1 would be in accordance with article 5.]

ARTICLE 20
Signature, Ratification, Acceptance, Approval, and Accession

1. This Convention shall be open for signature by any State at the Headquarters of the Organization from __ to __ and shall thereafter remain open for accession by any State.

⁶ Members of the Working Group agreed to consider various models of dispute resolution, including among others those in MARPOL 73/78 and in the 1996 Protocol to the London Convention, or whether such a provision is necessary at all.

⁷ It was agreed that the Group would review this article following further development of the instrument and discussion of what is needed from the Organization.

2. States may become Parties to this Convention by:
 - (a) signature not subject to ratification, acceptance, or approval; or
 - (b) signature subject to ratification, acceptance, or approval, followed by ratification, acceptance, or approval; or
 - (a) accession.
3. Ratification, acceptance, approval, or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

ARTICLE 21

States with more than one system of law⁸

1. If a Party comprises two or more territorial units in which different systems of law are applicable in relation to matters dealt within this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which this convention applies.

ARTICLE 22

Entry Into Force

[To be developed.]

ARTICLE 23

Denunciation

1. This Convention may be denounced by any Party at any time after the expiry of two years from the date on which this Convention enters into force for that Party.
2. Denunciation shall be effected by the written notification to the Depositary, to take effect one year after receipt or such longer period as may be specified in that notification.

⁸ As this language was proposed for the first time during the deliberations of the Working Group, it was noted that delegations may wish to consider this language in the intersessional period so that the Group can take a decision whether it is necessary to include the text as proposed.
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ARTICLE 24

Depositary

1. This Convention shall be deposited with the Secretary-General, who shall transmit certified copies of this Convention to all States which have signed this Convention or acceded thereto.
2. In addition to the functions specified elsewhere in this Convention, the Secretary-General shall:
 - (a) inform all States which have signed this Convention or acceded thereto of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of the Convention; and
 - (iii) the deposit of any instrument of denunciation from this Convention, together with the date on which it was received and the date on which the denunciation takes effect.
 - (b) as soon as this Convention enters into force, transmit the text thereof to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 25

Relationship to International Law and Other Agreements

Nothing in this Convention shall prejudice the rights and obligations of any State under customary international law as reflected in the United Nations Convention on the Law of the Sea or under any existing international agreement.

ARTICLE 26

Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian, and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

DONE AT LONDON, this ... day of ..., two thousand.

ANNEX 1

CONTROLS ON ANTI-FOULING SYSTEMS

	Anti-fouling system	Control measures	Application	Effective date
OPTION A	Organotin compounds which act as biocides in anti-fouling systems	Ships shall not apply or re-apply such compounds ¹⁾	All ships	1 January 2003 or entry into force of Convention, whichever is later
	Organotin compounds which act as biocides in anti-fouling systems	Ships shall not bear such compounds on their hulls or external parts or surfaces	All ships except fixed and floating platforms that have been constructed prior to 1 January 2003 and that have not been in dry-dock on or after 1 January 2003 or entry into force of the Convention, which ever is later	1 January 2008, or entry into force of Convention whichever is later
OPTION B	Organotin compounds which act as biocides in anti-fouling systems	Ships shall not bear such compounds as an active anti-fouling substance on their hulls or external parts or surfaces ¹⁾	All ships except fixed and floating platforms that have been constructed prior to 1 January 2003 and that have not been in dry-dock on or after 1 January 2003 or entry into force of the Convention, which ever is later	1 January 2008 or entry onto force of the Convention, which ever is later

- 1) This requirement is considered fulfilled provided the ship has only been coated with an anti-fouling system not in violation of this annex subsequent to the effective date.

ANNEX 2

REQUIRED ELEMENTS FOR AN INITIAL PROPOSAL

1. An initial proposal shall include adequate documentation containing at least the following information:
 - (a) Identity of the anti-fouling system addressed in the proposal: name of the anti-fouling system; name of active ingredient, component, or subcategory of the system which is suspected of causing the adverse effects of concern;
 - (b) Characterization of the information which suggests that the anti-fouling system or its degradation products can cause adverse effects in non-target organisms or bioaccumulate significantly in organisms at concentrations likely to be found in the environment, e.g., the results of toxicity studies on representative species and bioaccumulation data;
 - (c) Material supporting the potential of the toxic components in the anti-fouling system or its degradation products to occur in the environment at concentrations which could result in adverse effects to non-target organisms or the water quality, e.g., data on persistence in the water column, sediments and biota, and the release rate of toxic components in studies or under actual use conditions, and monitoring data (if available);
 - (d) An analysis of the association between the anti-fouling system, the related adverse effects, bioaccumulation, and the environmental concentrations observed or anticipated; and
 - (e) A preliminary recommendation on the type of restrictions that could be effective in reducing the risks associated with the anti-fouling system.
2. An initial proposal shall be submitted in accordance with rules and procedures of the Organization.

ANNEX 3

REQUIRED ELEMENTS OF A COMPREHENSIVE PROPOSAL

1. A comprehensive proposal shall include adequate documentation containing the following information:

- (a) any developments in the data cited in the initial proposal;
- (b) findings from the categories of data set out in subparagraphs 3(a), 3(b) and 3(c) as appropriate depending on the subject of the proposal;
- (c) a summary of the results of studies conducted on the adverse effects of the anti-fouling system;
- (d) if any monitoring has been conducted, a summary of the results of that monitoring, including information on ship traffic and a general description of the area monitored;
- (e) a summary of the available data on environmental or ecological exposure and any estimates of environmental concentrations developed from environmental fate parameters through the application of mathematic models;
- (f) an evaluation of the association between the anti-fouling system in question, the related adverse effects, bioaccumulation, and the environmental concentrations, either observed or expected;
- (g) a qualitative statement of the level of uncertainty in the evaluation referred to in subparagraph (f) above; and
- (h) a recommendation of specific control measures to reduce the risks associated with the anti-fouling system.
- (i) a summary of the results of studies on available information specifying the effects relating to air quality, shipyard conditions, international shipping, other relevant sectors as well as the availability of suitable alternatives.

2. If appropriate to the anti-fouling system under consideration, the proposal will also include the following physical and chemical properties:

- Melting Point;
- Boiling Point;
- Density (Relative density);
- Vapour pressure;
- Partition coefficient (octanol/water coefficient);
- Water solubility (pH, pKa);
- Oxidation/Reduction potential;

- Molecular mass;
- Molecular structure;
- Impurities;
- By-products.

3. For purposes of subparagraph 1(b) above, the relevant categories of data may include, as appropriate:

(a) Data on environmental fate and effect:

- Modes of degradation/dissipation
- Persistence in the relevant media (e.g., freshwater/saltwater/water column/sediments/biota)
- Sediments/water partitioning
- Leaching rates of biocides or active ingredients
- Mass balance
- Bioaccumulation, octanol/water coefficient
- Modelling with appropriate/representative site/environmental conditions
- Validation of models with field data
- Hydrolysis;
- Photodegradation;
- Biodegradation.

(b) Data on effects in aquatic plants, invertebrates, fish, seabirds, marine mammals, endangered species, the quality of water, the seabed or habitat of non-target organisms:

- Acute and chronic toxicity to sensitive/representative organisms
- Developmental and reproductive toxicity to sensitive/representative organisms
- Endocrine disruption
- Sediment toxicity
- Bioavailability/biomagnification/bioconcentration
- Food chain/population effects
- Incidents/fish kills/strandings/tissue analysis
- Residues in seafood

(c) Data on chronic human toxicity through seafood intake.

ANNEX 4

FORM OF INTERNATIONAL ANTI-FOULING SYSTEM CERTIFICATE

INTERNATIONAL ANTI-FOULING SYSTEM CERTIFICATE

(Official seal)

(State)

Issued under the provisions of the
Convention On Controlling The Use Of Shipboard Anti-Fouling Systems That Have Adverse
Effects On The Marine Environment (hereinafter referred to as "the Convention")

under the authority of the Government of

.....
(name of the State)

by

.....
(person or organization authorized)

This Certificate replaces the certificate dated

Particular of ship¹

Name of ship

Distinctive number or letters

Port of registry

Gross Tonnage

IMO number²

Details of anti-fouling system applied

Type of anti-fouling used.....

Date it was applied.....

Name of paint manufacturers.....

¹ Alternatively, the particulars of the ship may be placed horizontally in boxes.

² In accordance with resolution A.600(15) – IMO ship identification number scheme, this information may be included voluntarily.

Name of anti-fouling paint.....

Active ingredient(s)

CAS number.....

THIS IS TO CERTIFY:

1 That the ship has been surveyed in accordance with article 9 of the Annex to the Convention;
and

2 That the survey shows that the anti-fouling system on the ship complies with the applicable
requirements of Appendix 1 of the Annex to the Convention.

Issued at.....

(Place of issue of certificate)

.....
(Date of issue)

.....
(Signature of duly authorized official issuing the certificate)

(Seal or stamp of the authority, as appropriate)

Endorsement of survey(s)

THIS IS TO CERTIFY that a survey required accordance with paragraph 1. (b) of article 9 of the Annex to the Convention found that the ship was in compliance with the relevant provisions of the Convention:

Survey required in accordance with paragraph 1. (b) of article 9

Details of anti-fouling system applied

Type of anti-fouling used

Date it was applied.....

Name of paint manufacturers.....

Name of anti-fouling paint.....

Active ingredient(s)

CAS number.....

Signed:.....

(Signature of authorized official)

Place:

Date:

(Seal or stamp of the authority, as appropriate)

Survey required in accordance with paragraph 1. (b) of article 9

Details of anti-fouling system applied

Type of anti-fouling used

Date it was applied.....

Name of paint manufacturers.....

Name of anti-fouling paint.....

Active ingredient(s)

CAS number.....

Signed:

(Signature of authorized official)

Place:

Date: